

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**North American Electric Reliability
Corporation**)
)

Docket No. RC11-6-000

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION'S ANNUAL
REPORT ON THE FIND, FIX, TRACK AND REPORT AND COMPLIANCE
EXCEPTION PROGRAMS**

October 4, 2017

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE FFT AND CE PROGRAMS HAVE BEEN SUCCESSFULLY IMPLEMENTED AND HAVE CONTINUED TO EVOLVE SINCE INCEPTION. 3	3
III.	JOINT NERC AND FERC ANNUAL REVIEW OF THE FFT AND CE PROGRAMS	7
IV.	ONGOING NERC REVIEWS OF NONCOMPLIANCE AND RELATED PROCESSES	9
V.	CONCLUSION	10
APPENDIX A.	Methodology and Criteria Applied in FFT and CE Sampling	11
APPENDIX B.	Specific Analysis of the Sampled Issues	14
A.	Process documents	14
B.	Description of the issue and risk assessment	15
C.	Evaluation and documentation of mitigation activities	16
ATTACHMENT 1.	Process Review Checklist	18

I. INTRODUCTION

The North American Electric Reliability Corporation (NERC), as the Electric Reliability Organization (ERO),¹ respectfully submits this report on the Find, Fix, Track and Report (FFT) and Compliance Exception (CE) programs. This filing complies with the Federal Energy Regulatory Commission’s (FERC or the Commission) March 15, 2012 order,² June 20, 2013 order,³ and September 18, 2014 order⁴ requiring an annual report on NERC’s FFT program. This filing also combines the evaluation of CEs with the annual sampling of FFTs in compliance with the Commission’s November 13, 2015 order.⁵

Since 2011, the ERO Enterprise⁶ has used the FFT program to resolve over 2,300 instances of noncompliance with the NERC Reliability Standards, 93.1% of which posed a minimal risk to the reliability of the bulk power system (BPS).⁷ Since June 2013, the ERO Enterprise has used the FFT program to resolve noncompliance posing a moderate risk to the BPS. The Commission agreed that the FFT program has “produced efficiencies in NERC’s processing of compliance and enforcement matters” and that continuing to use the FFT program to address moderate risk issues

¹ The Commission certified NERC as the ERO in accordance with section 215 of the Federal Power Act on July 20, 2006. *North American Electric Reliability Corp.*, 116 F.E.R.C. ¶ 61,062 (2006), *order on reh’g and compliance*, 117 F.E.R.C. ¶ 61,126 (2006), *aff’d sub nom. Alcoa Inc. v. FERC*, 564 F.3d 342 (D.C. Cir. 2009).

² *North American Electric Reliability Corp.*, 138 FERC ¶ 61,193 (2012) [hereinafter March 15 Order].

³ *North American Electric Reliability Corp.*, 143 F.E.R.C. ¶ 61,253 (2013) [hereinafter June 20 Order].

⁴ *North American Electric Reliability Corp.*, 148 F.E.R.C. ¶ 61,214 (2014) [hereinafter September 18 Order].

⁵ *North American Electric Reliability Corp.*, Letter Order Accepting NERC’s Annual Report on the Find, Fix, Track & Report Program, Docket No. RC11-6-004 (FERC Nov. 13, 2015) [hereinafter November 13 Order].

⁶ The term “ERO Enterprise” refers to NERC and the eight Regional Entities. The eight Regional Entities are Florida Reliability Coordinating Council (FRCC), Midwest Reliability Organization (MRO), Northeast Power Coordinating Council (NPCC), ReliabilityFirst (RF), SERC Reliability Corporation (SERC), Southwest Power Pool Regional Entity (SPP RE), Texas Reliability Entity (Texas RE), and Western Electricity Coordinating Council (WECC).

⁷ NERC’s searchable public FFT spreadsheets are available on its Enforcement and Mitigation website. *See Enforcement & Mitigation*, NORTH AMERICAN ELECTRIC RELIABILITY CORP., <http://www.nerc.com/pa/comp/CE/Pages/Enforcement-and-Mitigation.aspx> (last visited September 29, 2017).

will result in a “more efficient enforcement process and allow NERC and the Regional Entities to focus on occurrences of severe risk violations.”⁸

Building on the success of the FFT program, the ERO Enterprise developed the CE program in February 2014 to streamline further the resolution of lesser-risk noncompliance with NERC Reliability Standards. The ERO Enterprise has resolved almost 1,500 instances of noncompliance posing a minimal risk to the BPS through CEs since the inception of that program.⁹

In 2017, NERC and Commission staff completed their annual joint coordinated review of FFTs and the second annual joint review of CEs and found the ERO Enterprise appropriately handles noncompliance posing a minimal or moderate risk through these programs.¹⁰ NERC and Commission staff agreed with the final risk determinations for almost all FFTs and CEs sampled, and noted a significant improvement in the clear identification of root cause in all but one of the samples posted after the feedback calls from the previous year’s survey.¹¹ Commission staff also agreed with NERC that the FFT and CE programs are meeting expectations.

⁸ *North American Electric Reliability Corp.*, 148 F.E.R.C. ¶ 61,214 at PP 1, 35.

⁹ NERC’s searchable public CE spreadsheets are available on its Enforcement and Mitigation website. *See Enforcement and Mitigation*, NORTH AMERICAN ELECTRIC RELIABILITY CORP., <http://www.nerc.com/pa/comp/CE/Pages/Enforcement-and-Mitigation.aspx> (last visited September 29, 2017).

¹⁰ *See North American Electric Reliability Corp.*, 143 F.E.R.C. ¶ 61,253 (2013); *see also North American Electric Reliability Corp.*, 148 F.E.R.C. ¶ 61,214 (2014); *North American Electric Reliability Corp.*, Letter Order Accepting NERC’s Annual Report on the Find, Fix, Track and Report Program, Docket No. RC11-6-004 (FERC Nov. 13, 2015); *North American Electric Reliability Corp.*, Letter Order Accepting NERC’s Annual Report on the Find, Fix, Track and Report Program, Docket No. RC11-6-005 (FERC Jan. 13, 2017); *North American Electric Reliability Corp.*, Notice of Staff Review of Compliance Programs, Docket No. RC11-6-005 (FERC June 27, 2017).

¹¹ *See infra* Appendix B.

II. THE FFT AND CE PROGRAMS HAVE BEEN SUCCESSFULLY IMPLEMENTED AND HAVE CONTINUED TO EVOLVE SINCE INCEPTION

The FFT and CE programs, along with the Self-Logging Program, are important elements of the ERO Enterprise's risk-based approach to enforcement.¹² The FFT program resolves noncompliance posing a minimal or moderate risk to the reliability of the BPS, while the CE program resolves noncompliance posing a minimal risk outside of Section 5.0 of the Compliance Monitoring and Enforcement Program (CMEP). Both programs require: (a) mitigation of the noncompliance; (b) availability of the facts and circumstances of the noncompliance for review by NERC and Applicable Governmental Authorities; (c) tracking and analysis of the noncompliance as necessary to identify broader risks; and (d) providing the opportunity for the registered entity to opt out.¹³ These programs have streamlined processing, reduced caseload, and helped to ensure the efficient resolution of minimal and moderate risk noncompliance.

The FFT program was the first major step in implementing a risk-based approach to the enforcement of Reliability Standards that recognizes not all instances of noncompliance require the same type of processing and documentation. Over the last six years, the FFT program evolved from a processing track limited to minimal risk noncompliance to a vehicle for the efficient and effective disposition of moderate risk noncompliance. The success of the FFT program in resolving lesser risk noncompliance led to the development of the CE program and the expansion

¹² For a description of NERC's enforcement processes, CEs, and FFTs, *see* NERC Rules of Procedure, App. 4C §§ 3.8, 3A.0, 3A.1, & 5.2A, respectively.

¹³ *See* NERC Rules of Procedure, App. 4C §§ 5.2A, 3A, respectively.

of the FFT program to include resolution of moderate risk issues. The ERO Enterprise now uses these programs to resolve more than half of all discovered noncompliance.¹⁴

Use of the FFT and CE programs has contributed to the significant reduction of the ERO Enterprise's older caseload. For example, in 2016 the ERO Enterprise had only 66 instances of noncompliance dated pre-2015, less than one percent of all violations discovered in 2014 or earlier.¹⁵ In other words, the ERO Enterprise was able to process those older instances of noncompliance while continuing to process newer violations. The reduction in the active caseload discovered prior to 2015 reduced the average age of noncompliance in the ERO Enterprise inventory from an average age of approximately 10 to 11 months to less than 8 months at the end of 2016.¹⁶ As of Q2 2017, the average age of noncompliance in the ERO Enterprise is 7.3 months.¹⁷

Registered entities and Regional Entities have experienced efficiency gains due to the reduced documentation required for FFTs.¹⁸ Similarly, the CE program remains a key element in implementing the risk-based approach to enforcement of NERC Reliability Standards. As of Q2 2017, 84% of the noncompliance inventory across all Regional Entities is less than one year old,

¹⁴ See North American Electric Reliability Corp., *Compliance Monitoring & Enforcement Program Report: Second Quarter 2017*, at 4 (Aug. 9, 2017), available at <http://www.nerc.com/gov/bot/BOTCC/Compliance%20Committee%202013/Compliance%20Committee%20Open%20Meeting%20-%20August%202017.pdf>.

¹⁵ See North American Electric Reliability Corp., *2016 ERO Enterprise Compliance Monitoring and Enforcement Program Annual Report*, at 26 (February 8, 2017), available at <http://www.nerc.com/pa/comp/CE/Compliance%20Violation%20Statistics/2016%20Annual%20CMEP%20Report.pdf>.

¹⁶ *Id.*, at 7.

¹⁷ See *supra* n. 14, at 3.

¹⁸ See North American Electric Reliability Corp., NERC's Compliance Filing and Report on the Compliance Enforcement Initiative and Proposed Enhancements to the FFT Program, Docket No. RC11-6-004, at 9 (Mar. 15, 2013).

and only 6% is over two years old.¹⁹ FRCC, NPCC, RF, and Texas RE have completed processing of all noncompliance with discovery dates prior to 2014.²⁰ At the same time, there are only 37 pre-2014 instances of noncompliance still remaining to be processed across MRO, SERC, SPP RE, and WECC.²¹ Further, 14 of these pre-2014 instances of noncompliance are from federal entities.²²

Because of successive improvements to the FFT program – particularly the extension to moderate risk noncompliance in 2013 – NERC and the Regional Entities are able to handle minimal and moderate risk noncompliance efficiently and effectively, thereby allowing them to focus their resources on noncompliance posing a greater risk to the reliability of the BPS.²³ The ERO Enterprise’s use of the FFT and CE programs has continued to increase since FERC initially approved them. For example, the percentage of noncompliance resolved through FFT increased from 3% of moderate risk noncompliance in 2014 to 49% in 2017 through Q2 2017.²⁴ In addition, the ERO Enterprise used CEs to resolve 62% of the minimal risk noncompliance in 2016,²⁵ and 91.5% in 2017 through Q2 2017.²⁶

¹⁹ See *supra* n.14, app. A, at 12 (Fig.3).

²⁰ *Id.*, at 6.

²¹ *Id.*

²² *Id.*; On August 22, 2014, in *Southwestern Power Administration (SWPA) v. FERC*, the United States Court of Appeals for the District of Columbia Circuit ruled that FERC, and by extension NERC and the Regional Entities it oversees, could not impose monetary penalties against federal government entities. During the pendency of *SWPA v. FERC*, NERC placed on hold the processing of instances of noncompliance by federal entities.

²³ See *North American Electric Reliability Corp.*, 148 F.E.R.C. ¶ 61,214 at PP 1, 25, n.37; see also *North American Electric Reliability Corp.*, NERC’s Annual Report on the Find, Fix, Track, and Report Program, Docket No. RC11-6-004, at 2 (Sept. 18, 2015); *North American Electric Reliability Corp.*, NERC’s Annual Report on the Find, Fix, Track, and Report and Compliance Exception Programs, Docket No. RC11-6-005, at 2 (FERC Jan. 13, 2017).

²⁴ See *supra* n.7.

²⁵ See *supra* n.7, app. A, at 33 (Fig.9).

²⁶ From January 1, 2017, through June 30, 2017, NERC has posted 388 CEs out of 424 total posted or filed instances of minimal risk noncompliance. NERC’s searchable public FFT, CE, and Spreadsheet Notice of Penalty spreadsheets, and full Notices of Penalty, are available on NERC’s Enforcement and Mitigation website. See

The effective use of streamlined processing for lower risk noncompliance, through the CE and FFT programs, preserves ERO Enterprise resources for higher risk issues. Using CEs and FFTs to resolve minimal and moderate risk noncompliance has meant violations posing a more significant risk continue to receive the most attention and resources through processing in spreadsheet Notices of Penalty (NOPs) or full NOPs. Spreadsheet and full NOPs are used to resolve the highest risk violations, and accordingly the ERO Enterprise prioritizes these disposition methods with the greatest level of focus. Among those highest risk cases was a full NOP NERC filed in February 2016, resolving 36 violations of Critical Infrastructure Protection (CIP) Reliability Standards. Twenty-six of these violations posed a serious and substantial risk to the reliability of the BPS.²⁷ Additionally, in October 2016, NERC filed a full NOP resolving 19 violations of CIP Reliability Standards, all of which posed a serious and substantial risk to the reliability of the BPS.²⁸

The Regional Entities' effective use of FFTs and CEs – validated through oversight mechanisms such as the annual joint review described below – shows increased consistency in processing and understanding of the risk associated with individual noncompliance across the ERO Enterprise. Further, risk-based enforcement, through the CE and FFT programs, encourages sustainable reliability and security through comprehensive mitigation that addresses root causes

Enforcement & Mitigation, NORTH AMERICAN ELECTRIC RELIABILITY CORP., <http://www.nerc.com/pa/comp/CE/Pages/Enforcement-and-Mitigation.aspx> (last visited September 29, 2017). *See also supra* n.7 and n.9.

²⁷ *North American Electric Reliability Corp.*, NERC Full Notice of Penalty regarding Unidentified Registered Entity, Docket No. NP16-12-000 (FERC Feb. 29, 2016). This case had a penalty of \$1,700,000, which was aggravated based on the registered entity's failure to mitigate in a timely manner.

²⁸ *North American Electric Reliability Corp.*, NERC Full Notice of Penalty regarding Unidentified Registered Entity, Docket No. NP17-2-000 (FERC Oct. 31, 2016). The penalty for this full NOP was \$1,125,000.

with the implementation of internal controls that reduce the likelihood of recurrence of the noncompliance.

III. JOINT NERC AND FERC ANNUAL REVIEW OF THE FFT AND CE PROGRAMS

As part of their oversight of the FFT and CE programs, NERC and FERC staff conducted a joint review of FFTs and CEs posted by NERC between October 2015 and September 2016. The annual joint review began in October 2016 and ended in June 2017. During the review, NERC and FERC staff: (a) evaluated the Regional Entities' current FFT and CE procedures and processes; (b) reviewed a sample of minimal and moderate risk issues processed as FFTs and CEs; (c) assessed successful completion of mitigation for FFTs and CEs requiring the performance of ongoing mitigation activities; (d) evaluated the Regional Entities' assessment of registered entities' internal controls; (e) identified region-specific best practices and areas for improvement; and (f) provided observations to the Regional Entities related to the completeness of the programs. Through this review, NERC and FERC staff determined whether the Regional Entities were following the NERC CMEP and successfully implementing the FFT and CE programs.²⁹

On June 27, 2017, FERC staff issued its Notice of Staff Review of Compliance Programs. FERC staff agreed with NERC that the FFT and CE programs are meeting expectations.³⁰ FERC staff also agreed with the Regional Entities' final risk determinations for almost all samples, and noted significant improvement in the clear identification of factors mitigating the risk.³¹ Further,

²⁹ For a more detailed description of the review, *see infra* Appendices A-B.

³⁰ Notice of Staff Review of Compliance Programs, Docket No. RC11-6-005 (FERC June 27, 2017).

³¹ *Id.* (noting that 120 of the 123 sampled noncompliance were appropriately included in the FFT and CE programs). For the remaining three issues, FERC staff determined the posted information did not sufficiently support the Regional Entity's final determination of risk.

FERC staff noted that the identification of root cause has significantly improved over the past three years.³² In July 2017, NERC staff provided individual feedback to the Regional Entities with specific findings and recommendations for each region.

The sampling also indicated that registered entities adequately mitigated all 123 instances of noncompliance, including 14 self-logged CEs (approximately 11% of the CEs reviewed). The sample analysis also indicated a small number of documentation issues, particularly with regard to the quality of the information contained in the FFT and CE postings.³³ For example, a few of the FFTs or CEs lacked some of the information necessary for posting of noncompliance, such as start or end dates, root causes, mitigating factors lowering the risk, and compensating factors affecting the risk while mitigation is ongoing. However, a subsequent review of the supporting information for these FFTs or CEs identified a majority of the missing information.³⁴ NERC staff continues to work with the Regional Entities to ensure that all information necessary to understand the scope of the noncompliance and the extent of the reliability risk is included in the FFT or CE posting.

The results of the annual joint review show consistent improvement in program implementation. They show significant alignment across the ERO Enterprise, particularly in the processing and understanding of the risk associated with individual noncompliance. For a more detailed discussion of the findings from the annual joint FFT and CE review, see Appendices A and B.

³² *Id.*

³³ *See infra* Appendix B, at 14-16.

³⁴ *See id.*

IV. ONGOING NERC REVIEWS OF NONCOMPLIANCE AND RELATED PROCESSES

The ERO Enterprise is continuously refining its processes and identifying additional areas for improvement.³⁵ FFTs and CEs are subject to a 60-day review by NERC and FERC after posting of the issues each month.³⁶ NERC uses any issues identified in the reviewed samples to provide guidance to the Regional Entities, ensure consistency, and identify future improvements to the programs. NERC is also in the midst of a process review of mitigating activities and formal Mitigation Plans from 2014 through 2016. Effective mitigation requires both the clear identification of root causes and the implementation of sustainable internal controls that enable compliance, prevent recurrence, and reduce risk. NERC staff requested documents from the Regional Entities, will review sampled mitigating activities and Mitigation Plans in Q4 2017, and anticipates its analysis to be complete in Q1 2018.

During Q2 2017, the ERO Enterprise Enforcement and Compliance staff began reviewing and updating the ERO Enterprise Self-Report User Guide and the ERO Enterprise Mitigation Plan Guide. The user guides provide guidance to assist registered entities with the submission of Self-Reports and Mitigation Plans by enhancing the registered entities' understanding of the information necessary for NERC and Regional Entities to provide efficient and timely resolution of noncompliance and related mitigation. The updates to the user guides will support NERC's priorities by encouraging registered entities to provide information and act in ways that will aid in understanding risk and ensuring effective mitigation.

³⁵ In NERC's 2016 Annual CMEP Filing, which is still pending, NERC recommended discontinuing the public posting of self-logged noncompliance, and treating certain moderate risk noncompliance as CEs. *See North American Electric Reliability Corp.*, NERC's Annual Compliance Monitoring and Enforcement Program Filing, Docket No. RR15-2-000, at 7-18 (FERC Feb. 21, 2017).

³⁶ *North American Electric Reliability Corp.*, 150 F.E.R.C. ¶ 61,108 at PP 47-48 (2015).

V. CONCLUSION

NERC respectfully requests that the Commission accept this report in compliance with the March 15 Order, June 20 Order, September 18 Order, and November 13 Order.

Respectfully submitted,

/s/ Robert P. Goldfin

Edwin G. Kichline
Senior Counsel and Director of
Enforcement Oversight
Robert Goldfin
Associate Counsel, Enforcement
North American Electric Reliability
Corporation
1325 G. Street, N.W., Suite 600
Washington, DC 20005
(202) 400-3000
(202) 644-8099 – facsimile
ed.kichline@nerc.net
robert.goldfin@nerc.net

*Associate Counsel for the North American
Electric Reliability Corporation*

Dated: October 4, 2017

APPENDIX A. Methodology and Criteria Applied in FFT and CE Sampling

The NERC and FERC staff 2016 joint review involved a sample of 23 FFTs and 100 CEs for the period from October 2015 through September 2016, including 14 self-logged instances. FERC staff performed the sampling of FFTs and CEs, with feedback from NERC on specific instances to be included in the sample. NERC staff issued data requests to the Regional Entities on behalf of both organizations.

FERC staff used RATS-STATS³⁷ to select 13 CIP and 10 non-CIP FFTs from the 46 FFTs posted in fiscal year 2016. FERC staff also selected 55 CIP and 45 non-CIP CEs from the 470 CEs posted during the same period.

Table 1: Sample Size of FFTs for all Regional Entities

	Total Processed	Selected	Percent representation of total processed	Percent representation of selected
Total	46	23	% of 46	% of 23
FRCC	3	3	7%	13%
MRO	6	2	13%	9%
NPCC	3	2	7%	9%
RF	17	8	37%	35%
SERC	3	2	7%	9%
SPP RE	2	1	4%	4%
TRE	6	3	13%	13%
WECC	6	2	13%	9%

³⁷ RATS-STATS is a statistical audit tool used by the U.S. Department of Health and Human Services, Office of Inspector General, and Office of Audit Services and developed by the Regional Advanced Techniques Staff (RATS).

Table 2: Sample Size of CEs for all Regional Entities

	Total Processed	Selected	Percent representation of total processed	Percent representation of selected
Total	470	100	% of 470	% of 100
FRCC	6	2	1%	2%
MRO	33	7	7%	17%
NPCC	51	11	11%	11%
RF	126	27	27%	27%
SERC	54	12	12%	12%
SPP RE	51	10	11%	10%
TRE	25	5	5%	5%
WECC	124	26	26%	26%

NERC requested that the Regional Entities provide all FFT- and CE-related documents for the items included in the sample set, including, but not limited to: procedural documents; follow-up or sampling program procedures regarding mitigation completion; source documents; notices of eligibility; documents describing mitigation activities; certifications; affidavits; verification documents, if applicable; and evidence demonstrating the noncompliance was successfully mitigated. NERC examined the selected noncompliance and the documents received using nine criteria described in NERC’s FFT/CE Process Review Checklist.³⁸ The criteria were based on three major categories: (a) the description of the issue was clear and sufficient facts were included; (b) the risk determination was aligned with the facts and circumstances of each particular issue; and (c) the issues were timely and appropriately mitigated, with open issues being mitigated within one year.

In addition to the above criteria, NERC staff reviewed the documents provided by the Regional Entities to determine whether there were any cases where the Regional Entities omitted known information that would have helped NERC and FERC staff’s review of mitigating

³⁸ NERC’s FFT/CE Process Review Checklist is included as **Attachment 1**.

activities. NERC staff also assessed whether the root cause was appropriately identified, leading to effective mitigation. Where feasible, NERC staff's review also focused on whether a registered entity's internal processes and controls contributed to the mitigation of the risk during the pendency of the noncompliance.

NERC made informational filings of data requests and Regional Entities' responses for the public record. NERC also filed with FERC the information regarding the Regional Entities' processes and the specific FFTs and CEs on a privileged/non-public basis.

APPENDIX B. Specific Analysis of the Sampled Issues

A. Process documents

NERC found that, in general, each of the Regional Entities' internal documents and procedures regarding the FFT and CE programs follow the NERC Rules of Procedure and CMEP. Each Regional Entity has detailed internal procedures that provide systematic guidance in the processing of noncompliance. These documents gave NERC the assurance that the Regional Entities were properly determining the appropriate processing route for received noncompliance.

Most of the internal documents and procedures NERC reviewed showed evidence of periodic reviews and updates. Some of the documents did not contain any evidence of reviews and updates, or appeared not to have been updated within the last three years. While NERC does not have specific requirements regarding the maintenance of Regional Entities' internal documents and procedures, NERC's expectation is that documents are updated following significant changes to processes and procedures.

Notably, NERC found that half of the Regional Entities did not update their documents to include the requirement contained in FERC's November 4, 2015 order³⁹ that registered entities retain relevant records for 18 months after the date of posting or until verification.⁴⁰ NERC also found that some of the Regional Entities' communications with registered entities – specifically notifications of FFT or CE treatment – did not include the 18-month retention requirement.

³⁹ *North American Electric Reliability Corp.*, 153 F.E.R.C. ¶ 61,130 (2015).

⁴⁰ *Id.* at 13.

B. Description of the issue and risk assessment

NERC and FERC staff reviewed the description of the issue associated with each FFT and CE sampled. The sampled issues improved significantly this year from the prior year's review in terms of the risk assessments. In all instances of posted FFTs and CEs, the risks to the reliability of the BPS were adequately identified. While on occasion the Regional Entities omitted from the issue description and risk assessments relevant facts and circumstances, those facts and circumstances were not always critical for risk assessment. Nevertheless, inclusion of those facts and circumstances may have helped facilitate a better understanding by NERC and FERC staff of the issue or risk to the reliability of the BPS. In addition, some samples revealed instances where the Regional Entities either omitted or did not clearly identify the duration or root cause of the noncompliance. In most, but not all, of these samples, a subsequent review of the supporting information for these FFTs or CEs led to the identification of the missing information.

Through review of the provided documents, NERC found that the Regional Entities consistently and accurately addressed the risk presented by the noncompliance through their provision of mitigating factors and compensating measures in place for the duration of the issue. For the most part, the Regional Entities supported their risk determinations with facts that existed at the time of the noncompliance. The Regional Entities provided after-the-fact determinations only in conjunction with facts known at the time the issue arose to reinforce the risk determinations. NERC will continue collaborating with the Regional Entities to ensure the relevant information needed for a complete description and risk assessment is included for all noncompliance.

NERC reviewed the samples to confirm whether the root cause was clearly identified for each noncompliance. The appropriate identification of the root cause is necessary for effective

mitigation and prevention of recurrence of noncompliance. Notably, the Regional Entities made significant improvements in the identification of root causes, with only two of the 123 samples missing clear identification of root causes – as compared to seven during the prior annual joint review. Nevertheless, NERC identified samples where the root cause could have been described in more detail, particularly where the root cause was described as “human error.” While human error may contribute to the cause of a noncompliance or, in rare cases, be the sole cause of a noncompliance, the root cause may alternatively lie in a deficiency in a registered entity’s processes, procedures, or training. NERC notes that some samples went beyond listing “human error” and additionally identified the registered entity’s internal practices or procedures as contributing root causes.

C. Evaluation and documentation of mitigation activities

As part of the sampling, NERC determined that the Regional Entities were requiring timely mitigation of the FFTs and CEs to address both the instant noncompliance and abatement of future occurrences. Most of the sampled mitigation activities explicitly included measures designed to prevent recurrence of noncompliance. Furthermore, the Regional Entities provided acceptable affidavits for all 23 sampled FFTs.

There were some instances where the posted FFT and CE information left out information that was available in the underlying documentation. In these instances, while the posting was still accurate, additional information could have been included. For example, NERC staff identified issues where a direct link between the root cause and the mitigation activities to address that root cause was not clear. Nevertheless, NERC staff did not identify any issues where the mitigation activity was not adequate to address and remediate the noncompliance. For ongoing noncompliance (i.e. issues with mitigation activities still outstanding at the time of posting), some

samples failed to include a description of the compensating measures put in place during the pendency of the noncompliance aimed at reducing risk until mitigation was complete.

NERC identified Regional Entities that continue to verify mitigation completion for all noncompliance regardless of disposition method, instead of on a sampling basis for streamlined processing methods. NERC continues to work with the Regional Entities to update their verification processes and encourage sampling. NERC also identified Regional Entities still requiring formal Mitigation Plans instead of mitigation activities. NERC suggests that for Mitigation Plans that are submitted as completed, or are near completion, Regional Entities convert those Mitigation Plans into mitigation activities. Regional Entities can further increase processing efficiencies by accepting mitigation activities for lesser risk issues that qualify for streamlined processing and sampling verification for minimal risk issues (especially for those registered entities in the Self-Logging Program that have provided evidence of internal processes related to finding, fixing, and preventing noncompliance).

ATTACHMENT 1. Process Review Checklist

2016 – 2017 FFT and Compliance Exception Process Review Checklist

Any procedural documents or training documents that are used for the FFT and CE process.	
<i>Title, revision</i>	<i>Summary of the document</i>
<i>Title, revision</i>	<i>Summary of the document</i>
<i>Title, revision</i>	<i>Summary of the document</i>
<i>Title, revision</i>	<i>Summary of the document</i>

Follow-up or Sampling Program, e.g., audit or spot-check documents. Follow-up on closed issues and issues posted originally as open. Does the RE have a sampling process for random checking of completion or a spot check or audit process, to the extent it does not verify completion of mitigating activities?	
<i>Title, revision</i>	<i>Summary of the document</i>
<i>Title, revision</i>	<i>Summary of the document</i>
<i>Title, revision</i>	<i>Summary of the document</i>
<i>Title, revision</i>	<i>Summary of the document</i>

Results

Summarize your findings under the following categories:

1. Were the underlying facts and circumstances included? Was the root cause considered?

Were there any cases where the REs “omitted known information that would have facilitated NERC and FERC in review of the mitigating activities?” NERC Enforcement will assess whether the root cause was appropriately identified leading to effective mitigation.

2. Did the risk assessments include the risk to reliability, including mitigating factors during pendency of the issue? Was the risk determined in a consistent manner? For minimal risk issues, was CE/FFT treatment appropriate? NERC Enforcement will assess, as feasible, whether internal controls contributed to the mitigation of the risk during the pendency of the noncompliance. Ensure that the risk was not considered a minimal risk simply because of no adverse impact ("no harm no foul").

3. Were the issues mitigated successfully? For ongoing mitigation, was it successfully completed and certified? If the CE/FFT is associated with a formal Mitigation Plans, NERC Enforcement will determine whether a formal MP was necessary or if the RE requested a formal MP and explained the circumstances that required it.

4. Did the REs implement the changes regarding the 18-month record retention following FERC's November 2015 order?

	Questions	Issue Tracking ID
	Type - FFT/CE	
	Standard	
	Requirement	
1	<p>The description of the issue was adequate and includes the following:</p> <ul style="list-style-type: none"> a) Description of the issue, underlying facts and circumstances. For CEs, indicate if it was self-logged (applicable to CEs posted since May 2015). b) Discovery date and method of the issue. c) Duration of the violation - start and end dates of the issue. d) Explanation and proper identification of root cause. e) Compared to the evidence, the description of the issue that was posted is accurate and reasonably complete. 	
2	<p>Risk Statement adequately addresses the issue.</p> <ul style="list-style-type: none"> a) The issue posed a minimal (for FFTs and CEs) or moderate risk (for FFTs) to the BPS and does not warrant a monetary penalty. For moderate risk issues, the statement explains why it is appropriate for FFT treatment. b) Risk statement based on actual risk, at the time of the issue. c) Risk statement addresses mitigating factors that reduced the actual risk and compensating factors as relevant to the entity and circumstances (Does not include a blanket heightened risk statement related solely to the Standard (R) at issue). d) Indication of no actual harm (does not require "No harm is known to have occurred" if the risk assessment otherwise indicates that no harm occurred). e) If issue is ongoing, a description of all compensating measures in place during the period of noncompliance which reduce the risk to reliability while mitigation is ongoing. f) Compared to the evidence, the posted description of the risk assessment is accurate and reasonably complete. 	
3	<p>The mitigating activities address both the current issue and abatement of future occurrences.</p> <ul style="list-style-type: none"> a) Includes specific mitigation activities or steps to be taken. b) Addresses root cause of the issue and actions to prevent recurrence. c) Compared to the evidence, the posted description of the mitigation is accurate and reasonably complete. d) Based on the evidence and activities, does the issue appear to be appropriately remediated (mitigated)? e) While not required, state whether completion of mitigating activities verified for completed activities. <p>Or</p> <p>If posted as an ongoing issue, the mitigating activities were/will be completed within one year and indicate:</p> <ul style="list-style-type: none"> a) The expected completion date. b) The justification for the length of time required. 	

4	<p>If a formal MP was used for this issue, was the reason for request of a formal plan valid? If the formal MP was submitted by the entity at the same time as the issue was reported, that is okay. If NERC reviewers determines that a formal MP was not necessary, then NERC Enforcement will ask the Regional Entity to explain the circumstances that prevented use of mitigation activities.</p> <p>If a formal MP was submitted to NERC after the issue was already posted as a FFT/CE, this needs to be identified.</p>	
5	<p>For FFTs, an affidavit of completion signed by an officer with knowledge of the remediation was provided. For CEs other certification document/written notice to show that mitigated was completed.</p>	
6	<p>For ongoing mitigation, RE tracked and followed up to ensure that mitigation activities were successfully completed and certified.</p>	
7	<p>Were internal controls taken into consideration for FFTCE treatment?</p>	
8	<p>The RE considered the compliance history when evaluating this issue (applicable compliance history is three years from mitigation completion of prior issue to start of current issue). The RE considered the compliance history and determined there were no relevant instances of noncompliance OR includes applicable compliance history and how it is different from the instant issue or otherwise does not warrant a penalty or aggravation.</p> <p>a) Have there been any recurrences since the mitigation activities were completed?</p> <p>For FFT review, CEs are not considered a part of the compliance history unless the most recent one is an event or they continue to violate the same Standard/Requirement.</p>	
9	<p>The registered entity was notified of FFT/CE treatment at least 10 days before date of posting. For issues with completed mitigation at the time of posting, a notice that shows that after 60 days of posting the issue is considered to be closed if FERC/NERC have no issues. For issues with ongoing mitigation at the time of posting, the issue is closed after mitigation completion or after 60 days of posting, whichever is later.</p> <p>Did any of the notification letters include a statement about the 18-month record retention period per FERC's November 15 order?</p>	
10	<p>Overall Satisfactory? If not, state why or refer to checklist numbers that are unsatisfactory.</p>	

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 4th day of October 2017.

/s/ Robert P. Goldfin

Robert Goldfin
*Associate Counsel for the North American
Electric Reliability Corporation*